



*Joseph E. Young,
Senior Vice President, General Counsel & Secretary*

June 10, 2013

EX PARTE – VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: MB Docket No. 10-71: Response to Statement of Gordon Smith, President & CEO of the National Association of Broadcasters, Submitted in the Hearing on the "State of Video" before the United States Senate Committee on Commerce, Science and Transportation, Subcommittee on Communications, Technology, and the Internet, on May 14, 2013

Dear Ms. Dortch:

Homer Simpson, an iconic creation of broadcast television, once scolded his wife for "living in a world of make-believe! With flowers and bells and leprechauns and magic frogs with funny little hats."

Based on the above-referenced statement, which repeats many points previously asserted by broadcast interests in filings in this Docket, it appears that the National Association of Broadcasters (NAB) also dwells in an imaginary world—with local broadcast station managers independently making programming selections that result in Americans enjoying a wealth of high quality shows and programs responsive to differing local needs and interests, all for free.

Alas, in the real world, Maury Povitch gets far more airtime than Morley Safer, and stations with meaningful locally oriented programs are almost as rare as leprechauns and magic frogs. To illustrate, the actual daytime schedule of one station we recently looked at did not have even a single minute of local news or public affairs programming. Instead, it was filled with nationally syndicated fare such as an hour of so-called "court TV" shows, including a segment on "*Alleged Parrot Abuse*," two hours of sitcom reruns, including one titled "*It Never Rains in Hooterville*," and eight hours of "talk" shows with episodes such as "*I'm 58: Is My 28-Year-Old Boyfriend Cheating With My Daughter?*"

Contrary to Mr. Smith's assertion that broadcasters "offer free high-quality, over-the-air, locally-oriented service," for the vast majority of Americans, broadcast television is not locally-oriented, high-quality or free.

The Myth of Localism

A large number of the stations affiliated with the big-four national networks are owned by the networks themselves or by large station group owners like Sinclair, Nexstar, Raycom and LIN TV. Those stations' programming budgets and selections are controlled by executives at the national headquarters of the corporate parent, not local management. Local needs and interests are secondary to corporate goals, the most important of which is to increase profits. In making programming decisions, the owner of multiple stations has a strong incentive to maximize uniformity and to centralize production of programming not supplied by a network or purchased from a syndicator. Moreover, since production of programming—whether done locally, regionally or nationally—is expensive relative to other programming options, there is pressure to reduce the amount of original programming offered by stations.

As a result of these and other factors, very little locally originated programming is carried, as becomes obvious when we look at what television stations actually broadcast, rather than accepting the idealized descriptions offered by NAB and other broadcaster representatives. To illustrate, we analyzed the program schedules of over 130 stations owned or managed by selected multiple station groups other than the national networks during the hours of 6 A.M and Midnight on selected weekdays. The following table shows the average time devoted to the major kinds of programs offered by the stations:

Program Type/Theme	Hours
Network/Nationally Syndicated Talk/Tabloid/Health-Related Shows (e.g., <i>Jerry Springer</i> , <i>Maury</i> , <i>Live with Kelly & Michael</i> , <i>Dr. Oz</i>)	4.17
Network/Syndicated Series Reruns (e.g., <i>Seinfeld</i> , <i>Law & Order</i>)	2.59
Network Drama/Comedy/Reality Series	2.22
Nationally Syndicated Courtroom Shows (e.g., <i>Judge Judy</i>)	1.97
Network or Nationally Syndicated Game Shows	1.06
Station-Produced Local News	0.99
Network Morning Show (e.g., <i>Today</i>)	0.90
Infomercials	0.89
Station-Produced Local Morning Show	0.62
Network/Nationally Syndicated Celebrity News/Gossip	0.46
Network Soap Operas	0.44
Syndicated Religious Programs	0.39
Network/Nationally Syndicated News Magazine	0.33
Network Late Night (e.g., <i>Leno</i> , <i>Letterman</i> , <i>Kimmel</i>)	0.26
Network News	0.24
Nationally Syndicated Animal/Kids Shows	0.16
Local Lifestyle/Magazine	0.11
Local Sports	0.02
Miscellaneous	0.31

It is noteworthy that over 38% of the stations did not produce a single, solitary minute of local news or other locally oriented programming. For example, one station's entire schedule during the eighteen hours examined consisted of 7 hours of comedy series reruns, 5 hours of nationally syndicated tabloid/talk shows, 2 hours of infomercials, 2 hours of network drama series and 2 hours of a nationally syndicated television magazine show.

For stations that did offer locally produced programming, most of the time was devoted to local news and morning shows, rather than other content of local interest such as local culture, lifestyle or sports or community affairs—only about 18 hours out of a total of over 2300 hours of programming consisted of locally oriented programs that were not news and morning shows.

The average times spent on local news and local morning shows, not very large in the first place, are exaggerated for a number of reasons. First of all, these supposedly "local" programs often spend more time on national news, sports and other topics than on local events. Moreover, the local news coverage they do provide is focused on crime and scandal, rather than local culture, high school or college sports or public affairs. In addition, many stations offer multiple broadcasts of their basic news show—for example, a station may offer "News at 5," "News at 5:30" and "News at 6." Each half hour is essentially identical, and so the actual amount of originally produced news is less than the average time suggests. Much the same thing occurs with the local morning shows—the same stories are regularly repeated during hourly segments.

These results are consistent with those reported by the Alliance for Better Campaigns based on its examination of 7,560 hours of programming on 45 local television stations in seven media markets—it found that just 13 hours, or 0.4%, met the definition of "local public affairs programming" and most of that was broadcast on weekend mornings when few are watching television. According to the Alliance, home shopping and infomercials for which the local station is paid accounted for the largest number of hours, 14.4%, and there were "three times as many reruns of the sitcom *Seinfeld* than local public affairs shows."

Moreover, in DMAs with two or more stations that are commonly owned or managed, Professor Danilo Yanich of the University of Delaware and others have demonstrated that those stations' news services typically are homogenized to a high degree. As a result, a viewer tuning into any one of the different stations sees essentially the same content and, in some cases, even the same news readers and other on-air personalities.

If we turn from local news and morning shows to look at the rest of the stations' daily schedules, we find that there is also little attention given to local preferences. While all stations fill most of their schedules with national network and syndicated programs, it is possible for different local stations to tailor selections from among the available options to reflect differing local interests. One would think, for example, that the programs offered by stations in Albuquerque, New Mexico would differ significantly from those offered in Portland, Oregon because of the differences between the two cities in lifestyle, culture and other key characteristics conferring local identity. Yet, on one day chosen at random for comparison purposes, the schedules of the CBS stations in the two cities were virtually identical during the hours of 6 AM to Midnight—out of those eighteen hours, there was only a one hour scheduling difference, with

one of the stations showing two nationally syndicated celebrity gossip shows instead of two nationally syndicated game shows.

The Illusion of Quality

Mr. Smith characterizes local broadcast programming as “high quality.” Perhaps we would be more inclined to forgive the fact that broadcasters devote scant time to local programming if the depth or quality of what little they do provide were, in fact, first rate. Unfortunately, that is not the case. A study by the Lear Center at the USC Annenberg School for Communication & Journalism found that the average amount of time spent on local government during the 30-minute newscasts of eight Los Angeles television stations was 22 seconds, while commercials took up about eight and a half minutes of the half hour. Promotions of shows, weather and sports reports consumed a large amount of the half-hour. The time actually used to cover what might be characterized as news consisted almost entirely of crime and non-local stories. A study by the Columbia Journalism Review of local newscasts on over sixty stations in 20 cities found that roughly 70% of all stories were less than one minute long, meaning that reportage was “reactive and superficial.” The most common story involved crime, with time devoted to crime stories being twice that spent on any other topic, and the second most common type of story involved accidents, bizarre events, fires and catastrophes. Over forty percent of stories were about “everyday incidents, such as relatively common car accidents or crimes.” Where there is coverage of issues or controversies, there was “a distinct one-sidedness” in the presentations.

With very few exceptions, mostly at hours when not many are watching, the non-news offerings of local broadcast television are even more appalling. The day and evening are filled with shootings, stabbings and other mayhem, bathroom humor, sensationalist, risqué and titillating content, gender, ethnic and other stereotypes, juvenile delinquency, gratuitous violence, dangerous stunts, unrealistic lifestyles, misconduct and incompetence, greed and, of course, crass commercialism. Remember that this is the medium that, over fifty years ago, Newton Minow described as a vast wasteland and it is at least as barren now as it was then. Anyone who doubts that should, as we did, consult a guide to local broadcast TV offerings and read the detailed descriptions of the daily fare. No doubt, some of programs are popular, and our intent is not to be snobbish or to denigrate popular culture. Our point simply is that we should not allow apologists for the industry like Mr. Smith to confuse popularity with high quality.

The “Free” Fantasy

At one time, the concept of free over-the-air television was meaningful. That tradition of free over-the-air television had its roots in the impracticality of charging viewers who receive broadcast television over the air than to an exercise of altruism or civic responsibility by the broadcasters. As methods for collecting money from consumers have become practical, the broadcasters have not hesitated to take advantage, without the slightest shame or remorse. The media companies that own both broadcast and cable networks have shifted programs from broadcast television to cable networks for which they charge MVPDs monthly per-subscriber fees, so that programs that used to be available for free now can be viewed only on channels for which consumers must pay. Broadcasters have used retransmission consent rights to extract carriage of affiliated cable networks for which they charge and, more recently, to obtain cash

payments that mean that consumers actually pay billions every year for supposedly “free” broadcast programming. Moreover, when the national networks perceive a threat to their continued collection of billions in retransmission consent and reverse compensation payments from services like Aereo, they threaten to pull their shows off the air and convert their networks into pay TV services.

Today, the reality is that the big four broadcast networks have already essentially become cable networks, even though there has been no formal conversion. When local broadcast stations collect retransmission consent fees from MVPDs and those costs are included in subscriber charges, the result for subscribers is no different than what happens with the networks that are honest enough to call themselves cable networks: viewing the broadcast station costs money, just like viewing the cable network. The historical model for broadcast television has been undermined, and there is no meaningful “free over-the-air” television for the vast majority of Americans.

In fact, broadcast television is not “free” even in the case of those who do not subscribe to a pay TV service—cable and satellite subscribers who ultimately pay the retransmission consent fees collected by local stations and reverse compensation payments banked by the national networks subsidize the viewers who rely on off-air reception.

Among other things, this leads us to wonder why broadcasters continue to be given billions of dollars worth of electromagnetic spectrum that could be put to better uses. If the concern is the small percentage of the population who do not subscribe to a pay TV service, there are better solutions to insuring their continued access to television than requiring the vastly larger number of Americans who do subscribe to subsidize their viewing preferences.

The Fallacy That Broadcasters Contribute More to Localism than Cable Companies

Besides exaggerating the quantity and quality of locally produced broadcast television programming, Mr. Smith also overstates the contributions by broadcasters to the economic and social well-being of local communities and ignores the far greater contributions of cable companies.

Mr. Smith points out that broadcasters “[support] local charities, civic organizations and community events,” “help to create a sense of community, serve as “the means by which local businesses educate and inform the public about their goods and services,” help “create jobs and support local economies” and “address the needs of their communities, based on a familiarity with and commitment to the cities and towns.” We do not dispute that many local broadcast television stations make meaningful contributions to their communities of these kinds. We merely wish to point out that cable television companies do all of the things that Mr. Smith lists—and more.

Mediacom, for example, operates in approximately 1,400 franchise communities, over 90% of which contain 2,000 or fewer subscribers. Unlike broadcast stations, which tend to have offices in just the largest city in their DMAs, Mediacom’s thousands of employees live and work in many of the smaller towns and cities it serves. Mediacom pays millions in state and local taxes and, unlike broadcast stations, also pays tens of millions in annual franchise fees. It

donates free cable and high-speed Internet access service to hundreds of schools and libraries; and supports hundreds of local charities with cash donations and in-kind services.

While broadcast television stations devote, at best, a few minutes a day to local issues and interests other than crime and scandal, Mediacom has set aside channels exclusively for public, educational and governmental use. We also offer our *Mc22/Connections* channel that carries exclusive local programming produced by Mediacom within the vast majority of communities we serve, including high school sports, local legislative forums, show choir competitions and academic programs that honor our communities and the great outdoors. Mediacom's *NewsLeader* segments afford elected officials, non-profit organizations and community leaders the opportunity to publicize events and issues of local importance. The channel also covers college sporting events that are not available to broadcast customers in our local areas. Finally, Mediacom provides small businesses with advertising opportunities on dozens of highly rated cable channels, giving local merchants not only a competitive alternative to broadcast television stations, but also the ability to match their messages with their target audiences to a much greater degree than possible on broadcast stations.

With regard to severe weather and emergency alerts, Mr. Smith's implication that they are uniquely available through broadcast television stations is not true. Today, there are many sources for alerts and up-to-the minute information about developing ongoing situations, including the Internet, radio broadcasts and cable networks. Moreover, cable systems play a critical role in ensuring that emergency alerts and other content broadcast by television stations can actually be viewed by citizens in many communities where over-the-air reception is poor or non-existent. Finally, broadcasters do not let their alleged concern for citizen safety stop them from shutting off their signals if retransmission consent negotiations reach an impasse. For example, one broadcast group owner did not hesitate to shut off its stations carried on Mediacom's cable systems in parts of three states even as a hurricane and later a tropical storm were headed for those states.

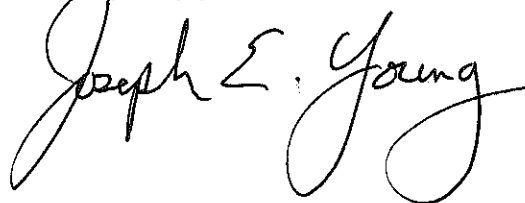
Perhaps the greatest contribution by cable companies to the thousands of local communities they serve has been spending billions to upgrade their systems to state-of-the-art cable networks in order to provide consumers with advanced services.

- During the past decade, while the cable industry was busy bringing digital video, video on demand, high speed Internet access and competitive VoIP telephone service to even the smallest communities in the nation, the Big Four's contribution to improving the lives of consumers was producing such edifying and timeless fare as FOX's, "The Littlest Groom" ("a group of tiny bachelorettes competed against average-sized women for the heart of a 4-foot-5 bachelor"), ABC's "Are You Hot: The Search for America's Sexiest People" (featuring Lorenzo Lamas using a laser pointer to spotlight scantily clad contestants' alleged shortcomings), CBS's "Baby Bob" ("new parents are stunned when they learn that their six-month-old baby has the ability to talk like an adult") and NBC's LAX ("inside look at the day-to-day goings on at the Los Angeles International Airport" starring Heather Locklear as runway chief—described by NBC's own Jay Leno as "so bad that the actual Los Angeles Airport is thinking of changing its name").

- While the cable industry has been reinvesting earnings and borrowing billions more in order to create, expand and improve state-of-the-art networks to deliver advanced services to even remote areas of the country, broadcast stations have been cutting or homogenizing news coverage and moving popular programming from broadcast television to pay TV.
- While the cable industry has benefitted consumers by increasing Internet access speeds without additional charge, reduced subscriber costs by offering bundled service packages at significant savings and reduced telephone costs even for non-subscribers because incumbent telephone companies have been forced to lower prices to meet competition, the broadcast industry has increased consumer costs by demanding large and growing retransmission consent fees even as broadcast stations and networks reduce the amount or quality of local news and public affairs coverage and move popular sporting events, movies and other programs away from free broadcast television.

In conclusion, we think the evidence is clear that, for the vast majority of viewers of broadcast television, the quantity of locally produced and oriented programs is abysmal and the quality is dismal. Claims to the contrary by broadcast interests are, in our opinion, simply propaganda, offered in the hope of convincing us that consumers get something of real value in return for their payment of billions in retransmission consent fees. It is equally clear that cable companies make contributions to local communities that exceed those of broadcasters.

Very truly yours,

A handwritten signature in black ink, reading "Joseph E. Young". The signature is written in a cursive style with a large, looping "J" and "Y".